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62,699

IN THE SUPREME COURT OF FLORIDA

**FILED**

IN RE: )  
SUPREME COURT COMMITTEE FOR )  
STUDY OF COURT DOCUMENTS DIS- )  
POSAL )

CASE NO. 62,699  
55,134

OCT 18 1982

S/D J. WHITE  
CLERK SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

RESPONSE TO PETITION

Respondent HENRY P. TRAWICK, JR. shows that he was a member of this Court's Committee for Study of Court Documents Disposal and has received a copy of the Committee petition for amendment of Rule 1.310(f). Respondent assumed from the language of this Court's order approving the Committee's report that the Committee was discharged and that any additional rule changes, particularly those in connection with one of the standing sets of rules, would be initiated and follow the procedure prescribed in Rule 2.130. As a member of the Civil Procedure Rules Committee, respondent knows the problem that is the subject of the petition transmitted to the clerk of this Court on September 30, 1982, is being considered by the Civil Procedure Rules Committee and there is no need for the now discharged Committee to take any further action.

In addition, respondent was one of the persons objecting to the amendment as proposed. Respondent admits that the rule needs to be reconsidered, but does not agree with either of the questions raised by the chairman of the discharged Committee or with the solution. It is axiomatic that an answer cannot be given until the question is correctly formulated.

The question is not whether a party should be able to obtain a copy of a deposition but from whom the party should obtain it. Rule 1.310(f) as presently phrased presumes the filing of a clean copy of a deposition with the court for court action. It is difficult to see how the deposition would have to be filed alone unless the Court ordered it under subsection (B). Otherwise, the copy of the deposition, or the parts contended to be material

to the decision of the matter before the Court, would have to be attached to the motion or other pleading raising the question and a copy would automatically be furnished pursuant to Rule 1.080(a).

As a result, the present rule accommodates only a part of the problem of obtaining copies of a deposition.

The practical problem of obtaining a copy of a deposition from a party has not been taken into consideration. Respondent, like many attorneys, uses the copy of a deposition that he has obtained from the court reporter as a work paper. Respondent marks the copy, makes notations on it, underlines parts of the testimony and otherwise alters the face of the deposition. Such a copy is not appropriate for filing and sometimes cannot be "cleaned" so that it is appropriate for filing. Under these circumstances a clean copy must be obtained from a court reporter.

The response of a majority of the discharged Committee is that counsel should keep a clean copy in case someone else requests it. It is respondent's contention that this places the responsibility of providing copies of depositions on an inappropriate person. It is the court reporter's responsibility and occupation to provide copies of depositions. It is not that of an attorney nor of a party to litigation. The court reporter is required to retain notes of the deposition and it is respondent's contention that a person desiring a copy should be able to obtain it in one of the following ways:

1. By obtaining a copy when the first transcription is made after notice from the court reporter that the transcription is being made. If the attorney for a party does not do so at that time, he should not be permitted to impose the obligation on one of his opponents to preserve a copy for him in case he requires it subsequently. This is merely transferring the paper storage problem and expense from a public office to a private person and no authority exists for imposing this duty on a private person without compensation. The compensation for reproducing it does not cover the cost of storing a clean copy for possible subsequent

reproduction on request. The point raised by Clerk Brinker about storing depositions that were never opened or used applies here as well.

2. A party who does not obtain a copy of a deposition when it is first transcribed can apply to the court reporter for a second transcription. It is part of the court reporter's duties to keep notes under Rule 2.075(e) for two years from the date of preparing the transcript. If the time limit is not considered sufficient because of the length of some litigation, the time limit should be extended rather than imposing the duty on a party.
3. From another party in the action only if that party actually has a clean copy that can be reproduced, but without any requirement that another party retain a clean copy for that purpose.

In addition, Rule 1.310(f)(3)(B) should be amended by providing that the copy be filed at the cost of the party to whom the court gives such a direction initially so that the costs can be later assessed as costs are generally allowed.

Respondent's suggestion, if adopted, would require the deletion of the last sentence of Rule 1.310(f)(3)(A) as presently phrased and the addition of subdivision (f)(4) phrased as suggested by respondent, a copy of the respondent's proposed subdivision (f)(3) and (4) being attached.

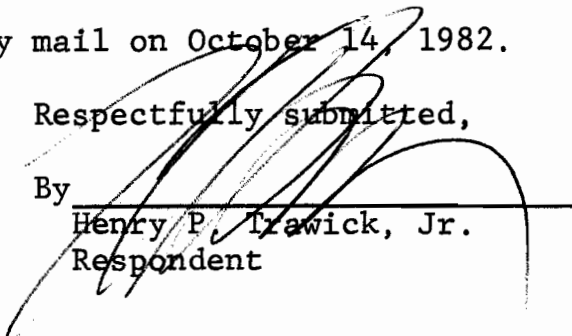
Respondent submits that the use of a deposition as a work tool by attorneys is a well established practice and the requirement of using the work copy could violate the work product privilege.

Respondent submits the matter should be considered by the Civil Procedure Rules Committee before any action by the Court is taken, assuming the Court determines that the discharged Committee still has standing to file the petition.

The undersigned certifies that a copy of the foregoing has been furnished to Jack Harkness as Executive Director of The Florida Bar and Wilfred Varn, as Chairman of the Civil Procedure Rules Committee of The Florida Bar by mail on October 14, 1982.

Respectfully submitted,

By

  
Henry P. Lawick, Jr.  
Respondent

RULE 1.310 DEPOSITIONS UPON ORAL EXAMINATION

(f) Certification in Filing by Officer; Exhibits; Copies; Notice of Filing.

(3) A copy of a deposition may be filed only:

(A) By a party or the witness when the contents of the deposition must be considered by the court on any matter pending before the court. Prompt notice of the filing of the deposition shall be given to all parties, unless notice is waived. A party filing the deposition shall ~~not be required to~~ furnish a copy of the deposition, or the part being filed, to other parties but shall furnish a copy of the deposition to any party or witness requesting it after payment of the reasonable cost of reproducing the copy by the requesting party or witness; as required under Rule 1.080(a).

(B) If the court determines that a deposition previously transcribed is necessary for the determination of a matter pending before the court, the court may order that a copy, or the part material to the matter being determined, be filed by any party at the initial cost of the party.

(4) Otherwise, a party who does not have a copy of a deposition may obtain it from the court reporter unless the court orders otherwise on a showing that a copy of the deposition cannot be reasonably obtained in that manner.